

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Claimant testified that he accepted employment with the respondent as an over-the-road truck driver during a telephone conversation with Ronnie Morrow, Personnel Director for the respondent, sometime during the month of November of 1994. Claimant was located in Wichita, Kansas, and Ronnie Morrow was located in the state of Texas when the telephone conversation took place. On the other hand, Ronnie Morrow testified for the respondent that the contract of employment was not offered by the respondent or accepted by the claimant until he completed certain pre-employment requirements at the respondent's business location in Booker, Texas. These requirements included filling out an employment application and passing a drug test.

If it is found that an employer has made an offer of employment during a telephone conversation and such offer was accepted by the claimant, the rule in this jurisdiction is that the contract of employment is made in the state where the claimant is located. See Pearson v. Electric Service Co., 166 Kan. 300, 201 P.2d 643 (1949); Hartigan v. Babcock & Wilcox Co., 191 Kan. 331, 380 P.2d 383 (1963); Morrison v. Hurst Drilling Co., 212 Kan. 706, 512 P.2d 438 (1973). However, in the case at hand, the Administrative Law Judge found that the last act necessary to complete the contract of employment between the parties, occurred in Texas and not Kansas. Claimant's request for preliminary compensation benefits was denied as the Administrative Law Judge found the Kansas Workers Compensation Act did not apply to this claim.

The Appeals Board finds that the claimant's testimony established that he accepted an offer of employment in Wichita, Kansas during a telephone conversation with respondent's Personnel Director, Ronnie Morrow. When claimant accepted this employment offer, he was gainfully employed by Coca-Cola in Wichita, Kansas as a truck driver. He possessed all of the respondent's pre-employment requirements needed for an over-the-road truck driver, except for passing a drug test. The respondent, through Personnel Director, Ronnie Morrow, knew that the claimant was employed by a national account, Coca-Cola, which subjected him to periodic drug tests. Mr. Morrow testified that prior to the claimant arriving in Booker, Texas to commence employment that he knew claimant had the qualifications and experience required by the respondent to be employed as a truck driver. When the claimant reported to the respondent in Texas, all the claimant had left to complete before he commenced driving for the respondent were certain pre-employment processing requirements. Determining whether an implied contract of employment exists depends on the intent of the parties, which is a question of fact, Wiggins v. Housing Authority of Kansas City, 19 Kan. App. 2d 610, 615, 873 P.2d 1377 (1994). In the instant case, the facts have established that the claimant and the respondent's agent both knew claimant had the experience and qualifications required by respondent to be employed as a truck driver at the time of the telephone conversation. The pre-employment process that took place in Texas only consisted of verification of these requirements. Accordingly, the Appeals Board finds that the Kansas Workers Compensation Act applies to this claim and to the injuries sustained to the claimant, while employed by the respondent, on January 23, 1995.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Preliminary Hearing Order of Administrative Law Judge Shannon S. Krysl, dated September 22, 1995, is reversed, and an order is entered by the Appeals Board finding that the Kansas Workers Compensation Act applies to this claim. The Appeals Board further orders this case remanded to Administrative Law Judge Shannon S. Krysl for appropriate findings based on the evidence contained in the preliminary hearing

proceedings in regards to claimant's request for temporary total disability benefits and medical treatment.

IT IS SO ORDERED.

Dated this ____ day of November 1995.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: James B. Zongker, Wichita, Kansas
Michael T. Harris, Wichita, Kansas
Shannon S. Krysl, Administrative Law Judge
Philip S. Harness, Director